

**SUMMARY OF LEGAL SURVEY DATA
FROM
THE FALSE MEMORY SYNDROME FOUNDATION**

**PRESENTED
FMSF CONFERENCE
MEMORY AND REALITY: EMERGING CRISIS**

APRIL 17, 1993

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Abstract

In the past few years, increasing numbers of suits have been filed or threatened by adults alleging that they had been abused years earlier (in most cases by their parents) but had "repressed" all knowledge of the event until "memories" were recovered during the course of therapy. In order to better understand this phenomenon the FMS Foundation surveyed a subset (n=432) of the total cases (N=3050) of accusations based on "repressed memories" which had been documented as of March 20, 1993. Cases were included in the subset because legal action, threatened or taken, was the direct consequence of accusations made on the basis of "repressed memories". One in seven of the total cases documented by the FMS Foundation fell into this subset. One in sixteen of the persons in contact with the FMS Foundation is, or has been, in the courts because of the accusations.

The results of the survey are preliminary. 89 of the cases surveyed are currently pending in the courts.; an additional 60 have been dropped, settled or decided. 25 cases have been filed against a therapist, clinic or accuser because of the accusations. The courts' response to claims made on the basis of "repressed memory" appears to be evolving. Many questions have been raised particularly of an evidentiary nature. These will be addressed in subsequent legal surveys conducted by the FMS Foundation.

During the past several years, the psychological phenomenon of "memory repression" has entered the courtrooms. Adult plaintiffs who, through therapy, have allegedly recalled memories of being sexually abused have brought, or threatened to bring, legal action against the persons they believe abused them. At issue is whether the allegedly recalled memories are in fact true.

The False Memory Syndrome Foundation (FMSF) was founded in March 1992 by families and mental health professionals concerned about the growing prevalence of accusations of child abuse based on "repressed memories" recovered in therapy. The FMS Foundation questions whether such memories in many cases are based not on historical fact, but on faulty assumptions about memory-recovery in suggestive therapy programs. The purpose of the FMS Foundation is to document, describe and disseminate information about the nature and prevalence of False Memory Syndrome and promote and sponsor competent scientific research in this area.

While the FMS Foundation does not provide legal advice *per se* it does provide access to resources and information to accused parties and their counsel. In an effort to understand the development of such memories and to help alleviate or remedy damage done by such accusations, the FMS Foundation has collected data on the status of the accusations being made on the basis of "repressed memory" from persons who have contacted the Foundation. All such contacts have been documented.

As of March 20, 1993, the False Memory Syndrome Foundation had documented in the United States and Canada 475 situations where accusations based on "repressed memories" had led to:

- a formal threat¹ of legal action brought by the person with the developing "repressed memories" of child abuse or incest;
- a legal action initiated against the person(s) accused on the basis of "repressed memory";
- a legal remedy, taken or considered, by an accused or non-accused person to meet threats or other aspects of the situation resulting from "repressed memory" (i.e., an action against the accuser or the accuser's therapist);

• a related situation involving the courts. These include:

- petitions for grandparents' visitation rights;
- custody suits (These cases have been included only when one spouse first develops "repressed memories" of child abuse by their own parents and then subsequently accuses their partner of abusing the couple's own children.
- situations where parents accused by adult children are investigated by a state child protective agency because they still have minor children, foster children or grandchildren living at home.

The FMS Foundation documents the cases of persons reporting to the Foundation that they have been affected by accusations based on "repressed memories". Any reports which indicated that legal action, either probable or actual was the result of those accusations were included in the Legal Survey. As of March 20, 1993, the total number of cases documented was 3050 and 475 of

¹For purposes of the FMSF Legal Survey, a "formal" threat is one in which a specific statement, written or oral, indicates that the accuser is contemplating filing a suit.

those fell into the Legal Survey subset. The number of cases included in this subset represents 16% (475/3050) of the total cases documented by the FMS Foundation at that time. The Foundation has tracked the progress of 432 of these cases, or approximately 1 in 7 of the documented cases. Some of that data is reported below.

Source of the Legal Survey Data

This subset (n=432) is composed of reports that: (1) accusations of abuse were being made on the basis of "repressed memory", and (2) a probable or actual legal action was the result of those accusations. In most cases it was the accused person who contacted the FMS Foundation. However, 58 of the callers were family members or friends, who had not been accused, but were concerned about the validity of the accusations and their effects on the accuser and on other members of their family.

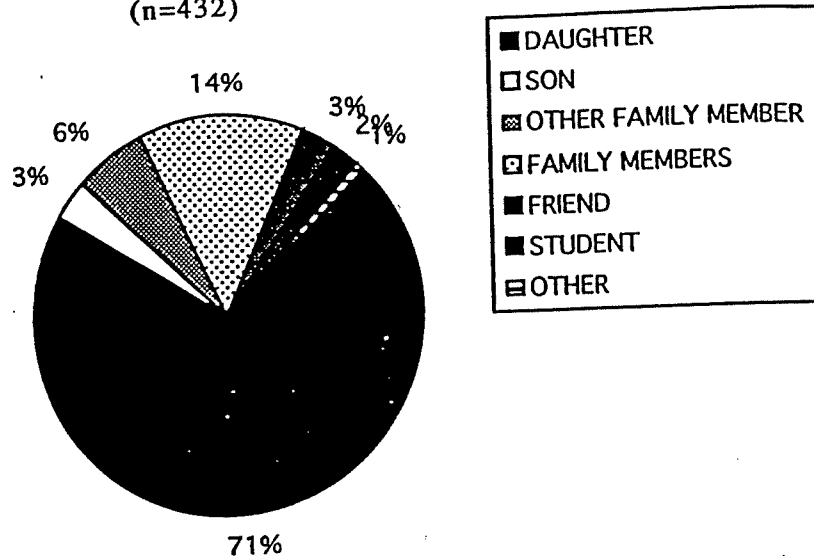
Data has been collected from several different, but overlapping sources: telephone interviews with the person reporting the situation to the FMSF, written Legal Survey forms and court documents submitted to the Foundation. Persons whose cases are being documented by the FMSF Legal Survey have been asked to submit Motions, Filings and Memoranda pertaining to important points of their cases.² Many examples of deposition questions have also been submitted in response to the FMSF Legal Survey. These documents have been collected and reviewed. The FMSF Legal Survey's questions included:

- Questions about the nature of the accusation:
 - the relationship of accuser to caller;
 - when the accusation was first made;
 - how many persons have been accused;
 - how the accusation developed over time;
 - whether the accusation includes allegations of satanic ritual abuse or some form of ritual abuse;
- Questions about the development of the memories:
 - whether the accuser had been in therapy at time memories developed;
 - what techniques were used in therapy (e.g., hypnosis);
 - whether a diagnosis of Multiple Personality Disorder was made;
- Questions about the status of legal action:
 - whether accuser has threatened legal action (if so, what form, when threatened, and with what response);
 - whether the accuser had initiated legal action (if so, what type, when filed, under what jurisdiction, what is current status of action, what special issues or motions were used, what were the costs);
 - what response was made by the accused party (if, for example, the person mentions a legal response taken, what grounds were used, what is the status of the action)?

²These Motions and other filings address issues such as: the application of the state Statute of Limitations or Discovery Rule, the admissibility of testimony of experts, the admissibility of testimony based on memory "enhanced" through hypnosis or drugs, petitions to compel the complainant to submit to an independent psychiatric and psychological examination, the requiring of an insurance company to admit coverage.

Characteristics of the Accusations

WHO IS INITIATING THE THREATS/ SUITS?
(March 20, 1993)
(n=432)



The chart shown above indicates the accuser's relationship (familial or other) in the primary accusation. Most accusations and suits are being leveled against family members; nearly three-fourths (293/432) are accused by a daughter against her parents. 14% (60/432) of the accusations are being made by more than one family member (e.g., a daughter and then a grandchild, two cousins, etc.) Eight school officials accused on the basis of "repressed memory" by former students are included in this survey. Seven of them have been sued. The FMSF Legal Survey also included data from accused family friends or childhood friends, former neighbors and health care professionals.

The FMSF has been contacted recently by individuals who say they stand accused by adults who claim to have repressed an event from adulthood (i.e., an alleged event which occurred when they were adults typically in their '30s). They argue that as an adult, they "repressed" knowledge of the event or its effect and therefore that the Statute of Limitations should be extended to allow a legal action.

Just over one-third (149/432) of the situations documented by the FMSF Legal Survey are based on accusations which have grown to cover many individuals and/or ritualized abuse³. In 76 of these situations, accusations of sexual abuse are being leveled against not only the parent(s) but additional persons as well. Also accused may be brothers, uncles, grandparents, other family members, neighbors, school principals, babysitters, piano teachers. In

³The term, *ritual abuse* (RA), is often used to describe events which include any or all of the following: ritualized rape or impregnation, ritualized torture, ritualized abortion, sacrificial murder, cannibalism, drinking of blood, forced use of mind altering drugs, multiple perpetrators, intergenerational perpetrators, perpetrators wearing disguises and/or ceremonial robes and, in the case of *satanic ritual abuse* (SRA), the use of satanic symbols or satanic worship.

the remaining 73 situations, the accusations made against several individuals include claims of ritualized abuse (57 accusations of SRA and 16 accusations of RA). The *FMS Foundation Family Survey* ⁴ results indicate that 21% of the accusations based on "repressed memories" include claims of ritualized abuse. Is it more likely that an individual with memories of ritual abuse which involve murder, bring a suit against those responsible? Is it more likely that evidence be found to support the claim and to bring a conviction? 16% of the suits, civil or criminal, which have been brought include accusations of ritualized abuse. Fourteen of these suits are pending; four have been dropped with prejudice; there has been one acquittal; one hung jury but no convictions.

Concerns of FMSF Families Included in the Legal Survey

For most families who contact the Foundation, the greatest concern is the knowledge that a child is laboring under false memories, has chosen to disregard historical truth and is unwilling to discuss developing beliefs rationally. Families also report their concerns that their child is being treated for a problem that may not exist while at the same time there is a risk that underlying and potentially serious problems are being overlooked. Most accused families say they are willing to go to any lengths -if it would help their adult child recover from the psychological effects of false memories of incest and sexual abuse and the dependency on a program which appears to elicit and reinforce those images. Most families hold out some hope of reconciliation and do not consider going to court or taking formal action against an accuser because they feel it may jeopardize a future reconciliation.

The most dramatic toll on families queried by the Legal Survey is loss of contact with children and grandchildren, loss of consort by non-accused husbands of wives who are developing images of parental child abuse, loss of privacy, injury to reputation, increased health problems and marital stress. In many cases the financial toll is substantial as well: legal fees, medical and therapy costs, insurance costs for therapy and/or hospitalization, possible award in a civil action, lost wages and lost jobs because of public yet unsubstantiated accusations.

Some accused families have minor children, grandchildren, or foster children still living at home. Often in this situation following an accusation of sexual abuse by an older child made on the basis of "repressed memory", an investigation by local County or State child protective officers for possible abuse of those minors is begun. There is a very real threat of having the minor children removed from the home before facts are established.

Status of the Situations Documented by the FMSF Legal Survey

For over half of the affected persons in contact with the FMS Foundation, civil lawsuits are a serious concern, and for about one-sixth (475/3050) lawsuits have already been filed or formally threatened.⁵ One in

⁴See Freyd, P., Roth, Z., Underwager, R., and Wakefield, H., *FMS Foundation Family Survey Results*, FMS Foundation, Philadelphia, Pennsylvania, April, 1993.

⁵Information from one in seven (432/3050) of the cases was then obtained from the Legal Survey.

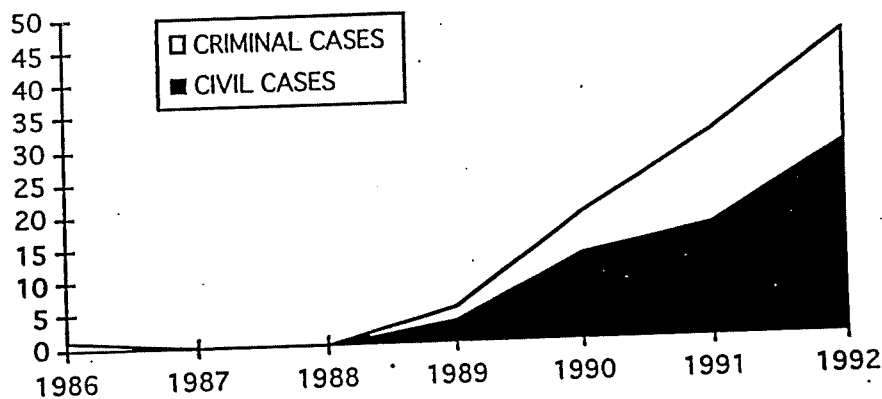
sixteen (192/3050)⁶ of the persons in contact with the FMS Foundation is, or has been, in the courts because of the accusations.

As of March 20, 1993, the Legal Survey showed that more suits were pending than had been decided or settled. This means that one can expect to see many new decisions in "repressed memory" cases during the coming year.

22 members have informed the FMS Foundation of suits brought on the basis of "repressed memories" which have been either dropped or dismissed. Roughly two-thirds of these suits were filed in civil court. Four suits (3 civil, 1 criminal) were dropped when the complainant retracted all claims. Several other members, currently being sued, report that their attorneys feel that the Plaintiff and/or Plaintiff's lawyer does not appear to be committed to pushing the case forward. They cite weaknesses in the case, principally the credibility of the accuser and lack of corroboration.

According to the FMSF Legal Survey, there has been a sharp increase in cases filed on the basis of "repressed memory" since the mid-1980's.

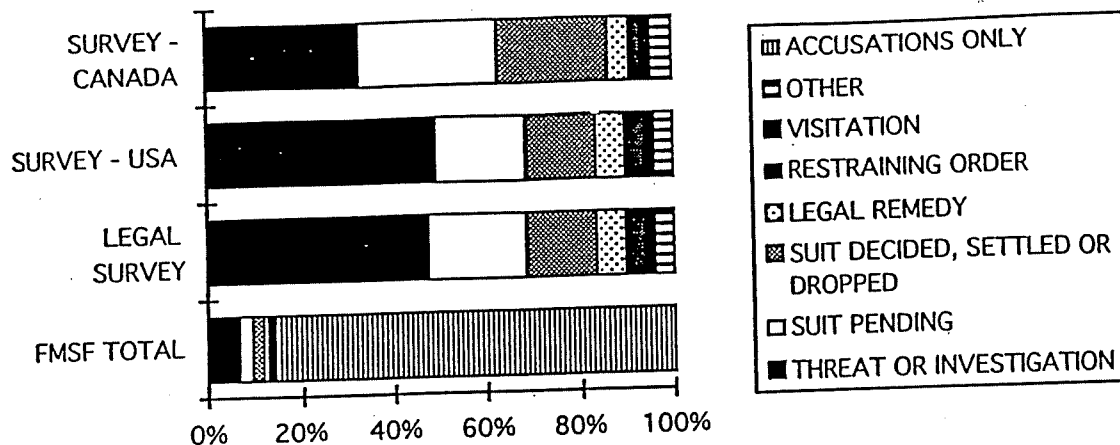
NUMBER OF CASES FILED YEARLY ON THE BASIS OF REPRESSED MEMORY
(CASES REPORTED TO THE FMSF
BETWEEN MARCH 1992 AND DECEMBER 1992)



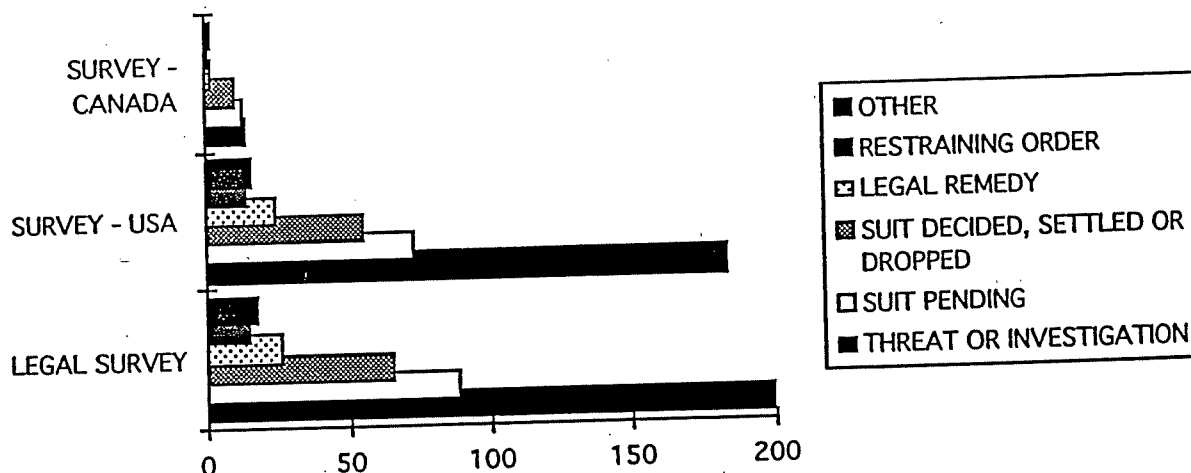
Once a formal threat based on "repressed memory" has been made, how likely is it that a suit against the accused will follow? According to the FMSF Legal Survey, 44% of accused persons receiving a formal threat were then taken to court. A larger percentage of Canadians receiving formal threats on the basis of "repressed memory" have also been taken to court. In Canada, nearly two-thirds (27/44) of the formal threats were followed by a suit. In the United States, approximately two-fifths (140/334) of the cases were sued after a formal threat based on "repressed memory" was made.

⁶The 192 cases include: 177 members who have been sued on the basis of repressed memories, or who have sued the therapist, clinic or the accuser. An additional 15 members have been served with a restraining order outlining both the alleged abuse and legally restraining the accused from initiating any contact with the accuser or the accuser's family. One member faced a court martial and was convicted.

ACTIONS AGAINST AND BY THE ACCUSED
PERCENTAGE OF TYPE AND STATUS OF ACTIONS TAKEN^{7, 8}



ACTIONS AGAINST AND BY THE ACCUSED
COUNT OF TYPE AND STATUS OF ACTIONS⁹



⁷FMSF TOTAL refers to the complete FMSF database (N=3,050, 3/20/93); LEGAL SURVEY refers to the FMSF cases (n=432) which are included in the Legal Survey; SURVEY-USA refers to the cases (n=393) from the United States who are included in the Legal Survey; SURVEY-CANADA refers to those cases (n=39) in the Legal Survey from Canada. Data described are current from March 20, 1993.

⁸It must be noted that many members of the FMS Foundation are involved in several types of action (e.g., a suit filed against the member who has responded with a counter-claim, both a restraining order and a suit may have been brought, etc.) The total number of actions tracked therefore, exceeds the number of persons whose case has been included in the FMSF Legal Survey.

⁹See footnotes 7 and 8 above.

Formal Threats of Legal Action

The FMSF Legal Survey has documented 199 cases where a formal threat of legal action has been made on the basis of "repressed memory" of child abuse. 41 of these cases, or nearly one-fifth of those threatened, received a letter demanding money to forestall a lawsuit. The letters typically demand money for therapy, lost work time, and/or future therapy. Some families have also received a form letter plus a photocopy of a newspaper report about a case in which the Plaintiff was awarded a large sum of money for claims based on "repressed memory".

Other threats are related to grandparents efforts to contact their grandchildren or to obtain visitation rights to see them. Accused parents have been told, "If you try to see the grandchildren, I will sue".

Following 39 formal threats, an investigation was undertaken by a law enforcement agency. 22 cases are currently under investigation by the police or sheriff's department for possible criminal charges. 17 police investigations have been closed or dropped. Three police investigations included excavations of the accused parents' basement and back yard in a search for evidence or human remains. FMSF has not learned of any evidence being found in any of those investigations to support the claims.

Following complaints filed by an adult with "repressed memories", some families with minor children living at home have been investigated by local child protective agencies.

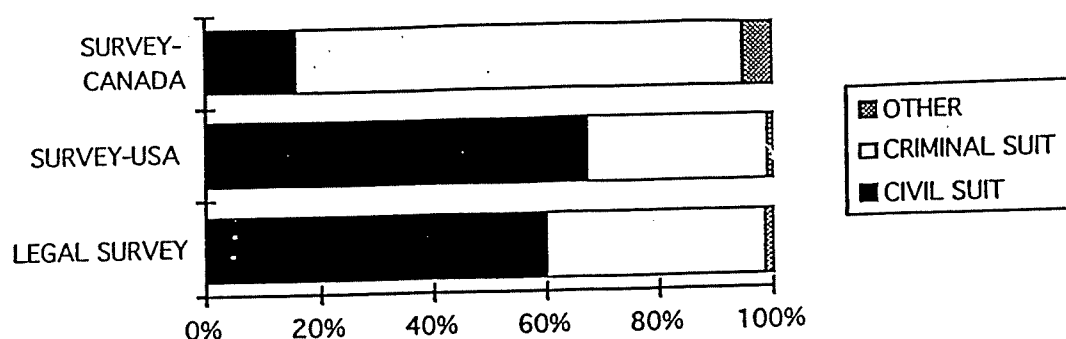
Suits Pending

As of March 20, 1993, most suits included in the FMSF Legal Survey were pending and had not yet been decided, settled or dropped. 89 persons had a suit pending against them which had been brought on the basis of "repressed memories". Approximately 75% of these suits were civil actions, 23% of the FMSF survey group had criminal charges pending against them. The remaining 2% had been filed in probate and family court or were being heard under juvenile court rules because both accused and accuser were minors at the time of the alleged abuse.

Criminal actions have been brought in nearly half of the states in the Union but do not appear to be concentrated in any one area. Civil actions brought on the basis of repressed memories and included in the FMSF Legal Survey have also been filed in about one-half of the states in the United States. One-quarter of all the civil suits tracked in the FMSF survey were filed in California. Nearly one in ten civil suits were filed in Washington State. Several civil actions have been filed in each of the following states: Texas, Michigan, New Jersey, Pennsylvania, Florida, New York, and Oregon.

While 15% of all suits included in the Legal Survey have been filed in Canada, 30% of the criminal suits have been filed there. In fact, approximately 75% of the suits filed in Canada are criminal cases. By contrast, in the United States, 68% of the suits filed are civil cases.

PERCENTAGE OF CIVIL, CRIMINAL, OR OTHER FILINGS AGAINST THE ACCUSED
(March 20, 1993)



Civil Actions

Civil actions allow a suit for compensation for personal injury which is the consequence of illegal or negligent act(s). Evidence must be brought to support the claim both of the act and the alleged damage, as well as of the causation of the injury by the act(s). When a claim of child abuse is made by an adult, Statutes of Limitations in many states currently allow a suit to be brought years after the alleged event(s) occurred, as long as the action is begun within a specified limit (usually two to three years) after first knowledge of -or discovery of- the event and the subsequent injury.

FMSF Legal Survey documents include Motions for Summary Judgment on the basis of Statute of Limitations from several states. In the past few years, state legislation amending civil Statutes of Limitations have granted "delayed discovery" periods within which a person may bring an action for the recovery of damages for personal injury based on childhood abuse. The provisions included in these statutes varies from state to state. Wording of clauses, jurisdictional issues, and retroactive clauses raise issues subject to court interpretation. Motions to extend Statute of Limitations to cover new situations are being reported:

- The plaintiff in one case has found 27 distinct personalities, all of whom are named. Discovery of the alleged abuse while in therapy was reportedly made too long ago to allow for a civil suit to be filed according to the state Statute of Limitation. The plaintiff is arguing that all of the early personalities to be identified were children and therefore too immature to be aware of their right to file for damages. It is further argued that only when an adult personality surfaced, could the plaintiff take the matter to court. A hearing has been scheduled to decide whether the Statute has run.

- In another case, psychological records of the plaintiff from the mid-1980's suggested that the Statute of Limitations had already run. A motion to dismiss was denied because the judge found that while the records were authentic they were not trustworthy. The judge questioned the manner in which the records were transcribed. Depositions of the therapist are being taken to determine the "trustworthiness" of the records kept.

- In two cases, an adult is alleging that knowledge of events and/or the resulting injury were repressed. The alleged events took place not during childhood, but recently after the complainant had reached the age of majority.

- A number of suits brought against a mother for negligence, for allegedly "knowing but not stopping" abuse, have been dropped because the state Statute had already tolled.

Evidentiary questions arise when an action is brought years, even decades, after the alleged event(s) took place. Often few records or reliable witnesses exist from the time of the alleged abuse. Contemporary records may be considered hearsay; they may not be admissible in addressing the point of fact to be decided by the court. Documents submitted in response to the FMSF Legal Survey include Motions and Memoranda of Points and Authorities dealing with 1) exclusion of witnesses from the courtroom while they are not being examined; 2) restriction of the experts' testimony regarding the supposed facts of the events in question and restriction of professional opinions "sufficiently beyond common experience that the opinion of the expert would assist the trier of fact. . ."; 3) prevention of references to objectionable or prejudicial matters.

In many cases, respondents to the FMSF Legal Survey often note that the stories appear to grow over time. They often puzzle over contradictions and inconsistencies in the plaintiff's claims.

•Examples can be found in many cases: In one case, an accused grandfather had broken a hip and was unable to climb stairs at the time in question. In another, an accused grandmother had cataracts and was unable to drive at night. In yet another, the house the family lived in during the accuser's childhood had no attic, the site of the alleged abuse. In another case, the defendant's military discharge papers show that he was not in the country during the period of the alleged abuse. In several cases, a sibling slept in the same bedroom as the accuser during the period in question and does not remember any abuse of the type described.

•In one case, the story continues to grow even while the case is in the courts. The plaintiff is quoted in the press as saying, "more [accusations] to come". In another case family members feel the story has been revised over time to answer family members' reasons for disbelief. In yet another case, accusations against the family grew to include both parents, brothers, grandparents, and finally great-grandparents (who allegedly ran a child abuse ring in the southern part of their state in the late 1800's).

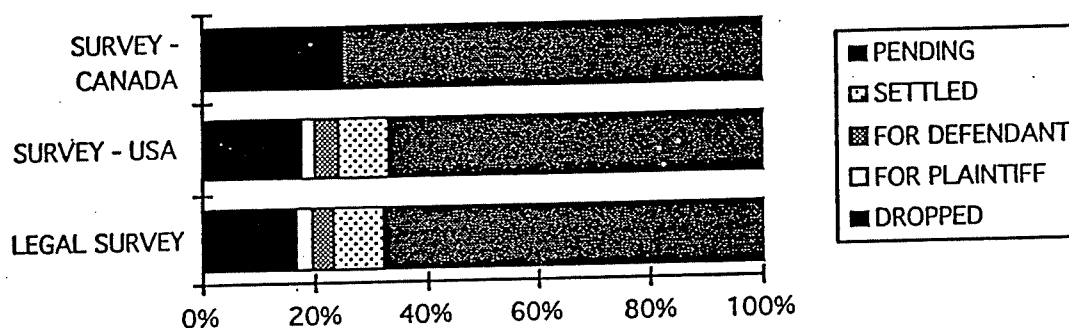
According to plaintiff's complaints or depositions, the memories of past child abuse did not exist prior to therapy. Many complaints include a phrase similar to, "when in the course of intensive psychotherapy and treatment she came to understand the existence and nature of her injuries. . ." In a number of cases, memories of abuse did not exist prior to a session in which hypnosis or sodium amytal were used. In response to the FMSF Legal Survey, copies of Motions in Limine have been submitted which ask for the exclusion of testimony from memories which were "hypnotically refreshed". One such motion has asked that any testimony of the plaintiff be excluded, since by the plaintiff's account, all "memories" and "feelings" concerning the allegations of the complaint were first allegedly uncovered during hypnosis and thereafter amplified.

According to respondents to the Legal Survey, a number of civil suits are progressing very slowly. Others, it appears, may be dropped. Many accused persons have complained to the FMSF that the plaintiff does not respond to Motions or Interrogatories. These accused persons had hoped to have their statements of innocence vindicated in a timely way.

•One suit initially demanded \$1 million in damages. The plaintiff's attorney is now recommending that the suit be dropped. Contradictions in the story and lack of evidence are cited. In another suit, neither the plaintiff's attorney nor the plaintiff appeared in court on scheduled court hearing dates.

- One suit named the accuser's parents and 100 unnamed J. Does as defendants. The accuser is now requesting a dismissal.
- Another case initially asked for a half-million dollar award, which was dropped to \$50,000, to \$15,000 and then dropped altogether when the accused refused to settle.
- A suit asking \$2.5 million from the accuser's parents was dropped six months later when the plaintiff recanted, fired his lawyer and walked out on the therapist. The plaintiff's attorney now reportedly says he doubts the claim.
- In one case, allegations grew from rape to later include torture, multiple pregnancies, sacrifice of babies and other murders, devil worship and other satanic rituals involving at least six people. After fourteen months, all charges were withdrawn during a pre-trial competency hearing.

STATUS OF CIVIL ACTIONS AGAINST THE ACCUSED
(March 20, 1993)



FMSF legal researchers are following the progress of other suits which have been brought on the basis of "repressed memories" or because of a therapeutic program which led to "repressed memories". Examples include:

- Suits (9) against therapists and/or clinics by former clients who allege that they had been misdiagnosed, misled and mistreated in therapy and who believe their recovered "repressed memories" to be the product of that therapy.

- Suits (2) against therapists or health professionals by clients who maintain that not only had they been abused by most members of their family, but that their therapist similarly abused them. These clients currently believe their "repressed memories" to be true.

- Suits (8) brought on the basis of "repressed memory" against school officials by former students alleging sexual abuse occurring decades earlier. (Four families tell us that former teachers are accused in addition to many of their family members.)

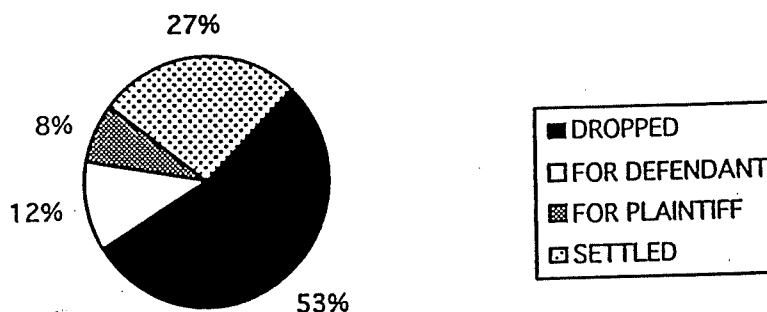
- A suit against a newspaper for publication of false accusations.

Outcome of Civil Cases

Few civil suits have been decided at the time of this writing. A verdict had been reached in only 5 of the civil cases included in the Legal Survey as of March 20, 1993. Over half of the civil suits brought had been dropped and just over one half were concluded in an out of court settlement. All of the settlements were filed in the United States. Two families who chose to settle, report that the accuser continues to make public statements and accusations.

In three cases there was a finding for the defendant, in two cases the finding was for the plaintiff.

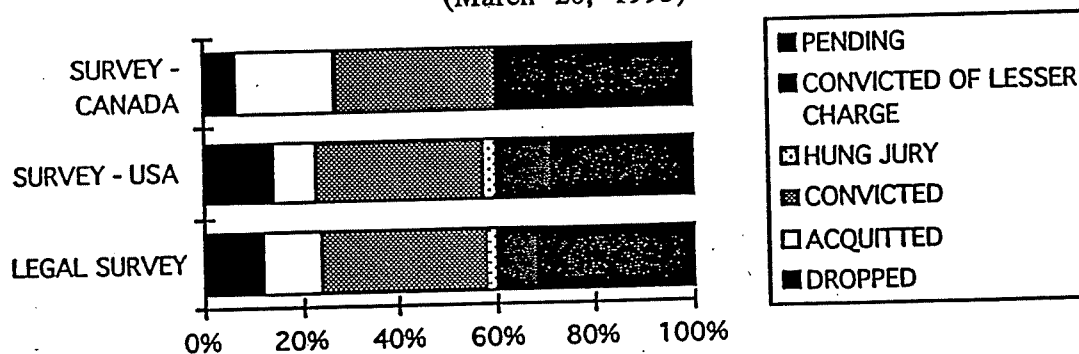
OUTCOMES OF CIVIL ACTIONS AGAINST FMSF MEMBERS (March 20, 1993)



Criminal Actions

Nearly one-third of the criminal actions filed on the basis of "repressed memory" are currently in the courts. Of the cases which have been resolved, 11% have ended in an acquittal; 13% were dropped; there were convictions in 33% of the cases; 7% were convictions on a misdemeanor charge; one case resulted in a hung jury.

STATUS OF CRIMINAL ACTIONS AGAINST FMSF MEMBERS (March 20, 1993)



17% of the criminal actions documented by the FMSF Legal Survey are pending. Of these, several respondents of the FMSF Legal Survey note changes in the claims over time, contradictions and inconsistencies within the accusations and between the claims and and other persons' memory or extant records.

In one case, the accusations grew include additional people as abusers. Claims were also made that other persons had been abused as well. Reportedly none of these persons, accused or allegedly abused (except for the complainant) believe that the abuse took place. The respondent to the Legal Survey commented that this case probably would have been dropped earlier,

but that once this course was taken, it was hard for the complainant to back out.

- In another case, a woman, after accusing her own father of abusing her decades earlier, then accused her father-in-law of molesting seven grandchildren, 7 to 13 years of age, at the same time, in an upstairs bedroom immediately above a room where other adult family members were conversing. The children allegedly stood in line, while they were smeared with cake, ice cream and ketchup, molested and then cleaned up so that they returned downstairs smiling. There are reportedly questions about whether most of the children were in the house on the date named. The transcripts of the questioning of the children reportedly raise additional questions about the validity of the claims.

- In another case, the complainant reportedly does not now want to testify, is doubting her memories and wants to see her family. Criminal charges of sexual abuse against her father had been brought just before the father was to remarry and just after the complainant was denied continued child support.

- In another case, a woman is accusing both parents, all brothers and various other family members of sexual abuse and molestation. Only one of the accused has been formally charged. The family is concerned about her mental and emotional stability and about the welfare of her children.

- In three cases currently pending, accusations have grown to include SRA or RA accusations.

- In one case parents have been charged with 10 sexual offences by all three children.

Outcome of Criminal Cases

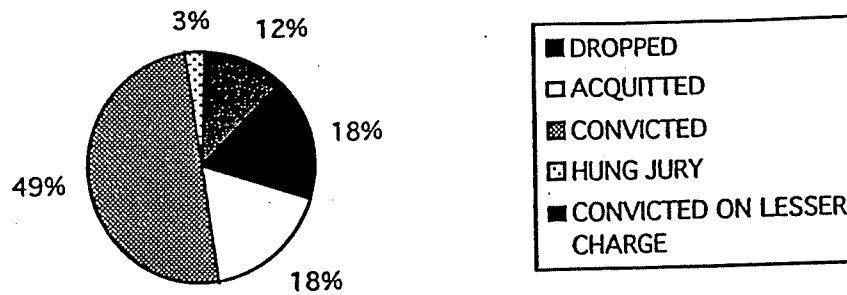
Nearly half of the criminal suits included in the FMSF Legal Survey ended in a conviction.¹⁰ There were 17 criminal convictions. 33% of the criminal cases decided in Canada ended in a conviction. In the United States, 36% of the decisions were convictions. Of the convictions, roughly half of those heard in courts in the United States were handed down prior to 1992. All but one of the convictions prosecuted by the Crown were given during 1992. Four persons pled guilty to a lesser charge. The accused family members who pled guilty to a lesser charge reported that they were in poor health, and that their doctors felt they might not survive a lengthy criminal trial.

Six criminal actions have ended in acquittals. Five of the six acquittals were given during 1992 or or early in 1993. Of the cases where criminal charges based on repressed memory have been laid, nearly 1 in 6 have been dropped.

20% of the Canadian cases ended in an acquittal. 10% of criminal cases in the United States ended in an acquittal. In 13% of the cases in the United States there was a plea bargain and the defendant was convicted of a misdemeanor. The FMSF Legal Survey is unaware of any such pleas entered in Canada.

¹⁰Sentences range from 21 months to life imprisonment.

OUTCOMES OF CRIMINAL ACTIONS AGAINST THE ACCUSED
(March 20,1993)



In all interviews with respondents to the FMSF Legal Survey who have been convicted or with members of their immediate families, the accused continue to maintain their innocence. Most note that no evidence was presented to support the complainant's claims, while documents and information were available which seemed to contradict the claims. Examples include:

- a diary of the accuser, a teenager at the time of the writing, which spoke of her first sexual encounter with one of her contemporaries, written after the alleged sexual abuse incident took place;
- a series of police reports made prior to the charges of sexual abuse, each of which concludes that, though the father was accused of abduction and later of arson, both allegations were false;
- other specific contradictions between the claims and physical, personal or temporal records;
- other inconsistencies within the claim itself.

In one case, the judge reportedly did not admit the testimony of defense character witnesses or the results of psychological or penile plethysmograph tests of the accused.

The FMSF has tracked several criminal cases in which the Complainant is a minor child accusing grandparent(s). In all of these cases, the person reporting the situation believes the accusations are not true; that they result from the combined influence of another adult family member with "repressed memories" of child abuse and a suggestive therapy program. One such criminal action filed in the name of a minor was withdrawn by the complainant when the minor reached the age of majority.

Two criminal cases have been dismissed because of a ruling that the period allowed under the Statute of Limitations had expired. Another was dropped after the accused person had a psychiatric evaluation done at the request of the State's attorney. In several cases charges were withdrawn just prior to the trial date.

•In one case, charges were withdrawn, the prosecution said, because the accuser was not well enough to tolerate the stress of a trial. The defense attorney reportedly felt that the defense case had been strong enough to win on its merits.

•Another suit, dropped immediately prior to the trial date, had included accusations of SRA against several family members. The complainant wrote that her reason for withdrawing the suit was that the date of the trial was "too close to the satanic cult month of October".

Actions by the Accused

Before describing the actions initiated by persons in contact with the FMS Foundation, it is to be noted that these persons often report that they had not wanted to take such a step because of their "concern about further destruction to family", reluctance to put more "stress on the grandchildren", fears that they may lose what opportunity they have to see the grandchildren, and the feeling that "the overall gain might be limited". These persons report that their attorneys have been cautious because of the publicity - a "trial by newspaper", massive paperwork, lack of precedent and the difficulty of proving the cause of action. Despite these reasons for caution, many falsely accused persons are looking for legal remedy.

62 members of the FMS Foundation have told the Foundation that they have considered bringing a suit against the therapist and/or clinic which to the best of their knowledge is responsible for the development of false memories and the subsequent wrongful accusations. These members report that they have contacted an attorney about possible causes of action and/or have hired a private investigator.

The FMSF is aware of 13 suits by accused family members which are pending against therapists at this time. 11 have been filed by accused parents who believe themselves to be falsely accused. The remaining two have been filed by husbands concerned about the type of care their wife is receiving, their wife's deteriorating condition and the destruction of the family. Grounds which have been employed include: defamation of character, alienation of family, loss of consort, extreme negligence, malpractice, practice beyond the qualifications or licensure.

Of these suits:

- Two had been filed after the accuser retracted all claims of past sexual abuse and stated that the beliefs were the result of therapy.
- Three were filed after an earlier suit brought by the accuser was dropped with prejudice.
- Two were brought as a counter-action to a suit initiated by the accuser which is still pending.
- One such counterclaim was filed and then dropped when the original suit by the accuser was withdrawn.
- One suit is leveled against the therapists and clinic under whose care an accusing child developed memories and was permanently injured in a suicide attempt while an in-patient.
- One accused parent is suing the therapist and clinic after he became a client of his child's therapist and paid for his child's therapy there.
- Two therapists of accusers have responded with counterclaims against parents who have filed a suit against them. Their cause of action is slander, alleging that the parents' statements about them has caused them to lose patients.

An additional 14 persons report to the FMSF Legal Survey that they are preparing to sue the therapist. Five are planning this remedy after a suit against them by a family member was either dropped or decided in their favor. Seven others with a suit against them are considering the possibility of a counter-claim either now or at the conclusion of the case currently pending against them.

26 persons report to the FMSF Legal Survey that they have contacted an attorney about the possibility of initiating a suit against the person making accusations of sexual abuse on the basis of "repressed memory". Some are

considering legal remedy against an accuser who is making unsubstantiated public claims in the community, to the press or in published autobiographies. In some cases, public statements have caused an accused parent to lose a job. Siblings feel the stress of the accusation has caused the health of the accused parent to deteriorate substantially. Other accused persons are considering a legal response to a letter demanding money. Grounds for these actions include: libel, slander, harassment, defamation, intent to cause emotional distress and extortion.

The FMS Foundation is aware of 12 suits¹¹ which have been filed against accusers:

- Five have been filed as a cross-complaint:

- One recovered all legal fees; two ended in a monetary award; two were dropped when the original suit was dismissed with prejudice.

- One action against an accuser for slander, intentional infliction of emotional distress, interference w/ contractual relations was upheld with a complete release of liability on the part of the accused family.

- Six suits against accusers are pending now.

- One suit was filed against an adult child with repressed memories after her own minor child retracted all charges against the grandparent.

- One was filed by an accused husband against an ex-wife for public statements after he had been acquitted.

- In one suit, the accuser has petitioned not to attend the deposition because it would "severely retard the healing process".

Possible Trends

A trend toward the extension of the beliefs of "repressed memories" of abuse has already been noted in a number of areas. Families have reported that over time, accusations change and apparently grow to include other persons.

Reports to the FMS Foundation indicate a trend toward people other than parents being accused. For example, the FMS Foundation has been contacted by many concerned husbands who believe their wives have developed memories during the course of therapy of child abuse by parents and other family members. These husbands are in most cases familiar with the development of the memories, the persons involved, the methods and assumptions used in the therapy and have paid for the therapy. They report that they are now being accused of similar abuse of the couple's own children. The Legal Survey data suggest that we will see increased numbers of both custody suits of this type and suits by husbands, accused and non-accused, against their wives' care givers.

Teachers, priests and mental health workers, and others in positions of trust are contacting the Foundation for information because they have been accused. An example, are mental health professionals who treat patients with dissociative disorders and other difficulties are contacting the Foundation, reporting that they believe themselves to be accused falsely on the basis of "repressed memories". Former patients, who had in therapy sessions spoken of child abuse by family members, are now accusing -and suing- their therapists for abuse which allegedly took place during therapy sessions.

¹¹Two of these suits have been filed in Canada, and 5 have been filed in the state of California.

Conclusion

The FMSF Legal Survey data corroborates much of what was already known: that cases are being filed in increasing numbers on the basis of "repressed memories", that precedents are being set now in these cases, that many new decisions will be handed down in the next few years. If the reported pattern continues, some of these suits will be dropped on evidentiary grounds and many investigations may not lead to indictments because of the contradictions and inconsistencies in the claims and of a lack of evidence to support them.

It is clear that insistence on independent, substantial corroborating evidence to support claims brought solely on the basis of "repressed memories" is essential. This is particularly important if beliefs, images and "repressed memories" develop in a setting which accepts them uncritically. It is essential if there is an unwillingness to question or consider alternative explanations to developing beliefs. It is essential if there is a rejection of any consideration of evidence which might either confirm or disconfirm the developing "memories". When such unquestioned and unexamined beliefs, images, feelings and "memories" become the basis for legal action, the observed dissonance between the therapeutic system and the legal system is jarring. The following excerpt from a deposition taken of a woman who was suing family members on the basis of "repressed memory" is illustrative:

Attorney: On what facts do you rely that it occurred over and over again?

X: Because my *memory* occurs over and over again . . . its just a *feeling*. (emphasis added)

Attorney: You have no other evidence to support the truth of your feeling, is that correct?

X: No

Attorney: You have no witnesses that would support that your feeling is accurate, do you?

X: No

Attorney: You have no physical evidence, scars on your body or conditions on your body that a physician has certified as a result of child abuse or sexual abuse when you were a child, do you?

X: Nothing [they] have found yet.

Attorney: You have no letter of confession or contriteness or remorse from B. regarding these allegations of sexual abuse during this time period or any time period, is that correct?

X: No

Attorney: Okay. Anything else that you can give to me and give to the court in support of your allegations that you were sexually abused by B. from 18 mo. to 11 yrs. of age than you've given me already?

X: Just today's disassociation. That's all. . . just what's wrong with me today. . . [and] I'm still afraid of spiders.

Attorney: You are suing your father for damages and you are saying only that, "I assume . . . [I was abused there] . . . You must understand that makes me most uncomfortable.

X: We don't share the same pattern of logic.

Attorney: All you are relying upon is your memory that these alleged events of sexual abuse, physical abuse- even to expand your complaint, abandonment, child neglect, poor supervision, these are based upon your feelings, your beliefs, your memories and there are no eyewitnesses to them, there are no other forms of physical evidence, documents, letters, correspondence to help you support your belief system; is that correct?

X: That I know of, yes.

Attorney: That you know of. Are you searching for some of these?

X: No

This Complainant dropped her suit the day before the case was to be heard in court.